

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

BOBBY EUGENE RODDY,

Plaintiff,

v.

Civil Action No. 3:08cv61

**UNITED STATES OF AMERICA;
WEST VIRGINIA DIVISION OF CORRECTIONS;
US DISTRICT COURT, NORTHERN DISTRICT
OF WEST VIRGINIA,**

Defendants.

ORDER

It will be recalled that on November 7, 2008, Magistrate Judge Seibert filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed his objections on November 17, 2008.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, filed pursuant to 42 U.S.C. §1983, wherein Plaintiff alleges that the Division of Corrections is imposing a substantial burden on his religious exercise, were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Upon review of the Plaintiff's objections, the Court finds that the Plaintiff has not raised any issues that were not already thoroughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action proceed in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that Plaintiff's Motion for Summary Judgment (docket #16) shall be, and the same hereby is, **DENIED**. It is further

ORDERED that the Plaintiff's Complaint against the United States of America and the US District Court, Northern District of West Virginia shall be, and the same hereby is, **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted. The Clerk is directed to enter Judgment for said Defendants. It is further

ORDERED that, to the extent that the Plaintiff's Complaint alleges a cause of action against the State of West Virginia Division of Corrections pursuant to 42 U.S.C. §1983, the same shall be, and hereby is, **DISMISSED WITH PREJUDICE**. However, to the extent that Plaintiff's Complaint alleges violations of RLUIPA against the West Virginia Division of Corrections through its Commissioner, Jim Rubenstein, the same shall be served on said Defendant. In that regard, the United States Marshal Service is hereby directed to serve a copy of the complaint, a completed 20-day summons, and a completed Marshal 285 Form on Defendant Jim Rubenstein, Commissioner of the West Virginia Division of Corrections. It is further

ORDERED that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the

Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties of record.

ENTER: February __5th__, 2009

/s/ Robert E. Maxwell
United States District Judge